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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XR058

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Alaska Fisheries Science Center Fisheries Research

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the NMFS Alaska Fisheries Science Center (AFSC) for the take of marine mammals incidental to fisheries research conducted in multiple specified geographical regions.

DATES: Effective from October 7, 2019, through October 7, 2024.

ADDRESSES: The LOA and supporting documentation is available online:

www.fisheries.noaa.gov/action/incidental-take-authorization-noaa-fisheries-afsc-fisheries-and-ecosystem-research. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Paragraphs 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1371(a)(5)(A) and (D)) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On September 6, 2017, we received an adequate and complete request from AFSC for authorization to take marine mammals incidental to fisheries research activities. On August 1,

2018 (83 FR 37638), we published a notice of proposed rulemaking in the **Federal Register**, requesting comments and information related to the proposed rule for thirty days. The final rule was published in the **Federal Register** on September 5, 2019 (84 FR 46788). For detailed information on this action, please refer to those documents. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during fisheries research activities in the specified geographic regions.

AFSC conducts fisheries research using trawl gear used at various levels in the water column, hook-and-line gear (including longlines with multiple hooks), gillnets, and other gear. If a marine mammal interacts with gear deployed by AFSC, the outcome could potentially be Level A harassment, serious injury (*i.e.*, any injury that will likely result in mortality), or mortality. We pooled the estimated number of incidents of take resulting from gear interactions and assessed the potential impacts accordingly. AFSC also uses various active acoustic devices in the conduct of fisheries research, and use of these devices has the potential to result in Level B harassment of marine mammals. Level B harassment of pinnipeds hauled out on land may also occur as a result of visual disturbance from vessels conducting AFSC research. AFSC is authorized to take individuals of 19 species by Level A harassment, serious injury, or mortality and of 25 species by Level B harassment.

Authorization

We have issued an LOA to AFSC authorizing the take of marine mammals incidental to fishery research activities, as described above. Take of marine mammals will be minimized through implementation of the following mitigation measures: (1) required monitoring of the sampling areas to detect the presence of marine mammals before deployment of certain research gear; and (2) implementation of a “move-on” rule in certain circumstances that is expected to

reduce the potential for physical interaction with marine mammals. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The AFSC will submit reports as required.

Based on these findings and the information discussed in the preamble to the final rule, the activities described will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: October 7, 2019.

Catherine G. Marzin,

Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

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